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Part VI

Environmental Protection Agency

Removal of Oil and Hazardous Substance Discharges

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 111

[WH-FRL 1669-4]

Removal of Oil and Hazardous Substance Discharges

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This regulation proposes a new Part 111 in Title 40 of the Code of Federal Regulations. It sets forth the methods and procedures for the removal of oil and hazardous substances from inland waters of the United States and provides for civil penalties for violation of mandatory portions of the removal regulations. Key elements of the regulation are voluntary removal guidelines for the proper removal and disposal of oil and hazardous substance discharges and mandatory provisions governing use of chemical agents applied to discharges.

The Clean Water Act provides that discharge cleanup is optional on the part of the discharger. The regulation is designed to encourage prompt cleanup action by the discharger with the Federal Government assuming responsibility for removal of discharged substances only where the discharger refuses to take action or fails to comply with the regulations. Early action by the discharger should normally result in lower cleanup costs to the discharger and less environmental damage. The principal thrust of this regulation is to create an incentive for rapid mitigation and cleanup of discharges. This would be accomplished by providing technical guidelines together with mandatory provisions. The voluntary guidelines are established to assist the discharger in effecting proper containment, removal, treatment and disposal of discharged material. It includes guidance on the use of mechnical removal methods and sorbents as well as clearly stating restrictions on the use of chemical agents. The mandatory provisions address use limitations for chemical agents, if used, when the discharger opts for cleanup.

DATES: Comments on this proposal will be received on or before February 23, 1981. After consideration of the comments received in response to this proposal, a notice of final rulemaking will be issued.

ADDRESS: Comments may be sent to Mr. Joseph I. Lewis, Chief, Marine Activities Branch, Criteria and Standards Division, WH-585, Environmental Protection Agency, Washington, D.C. 20460.

Copies of all public comments will be available for inspection and copying at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington, D.C. 20460. The Environmental Protection Agency information regulation, 40 CFR Part 2, provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph I. Lewis (202) 245-3036.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency proposes a new Part 111 pursuant to section 311 of the Clean Water Act (33 U.S.C. 1251 *et seq.*), hereinafter, referred to as "the Act". Section 311(j)(1)(A) of the Act requires the President to issue regulations establishing methods and procedures for removal of discharged oil and hazardous substances from waters of the United States that are consistent with maritime safety and with marine and navigation laws. The Act states in section 311(c)(1) that whenever oil or a hazardous substance is discharged, the President is authorized to remove or arrange for the removal of such material unless the owner or operator (discharger) takes action to properly remove such material. Further, section 311(c)(2) requires the President to prepare a National Oil and Hazardous Substances Pollution Contingency Plan. By Executive Order 11735, dated August 1973, the President delegated his authority to the Environmental Protection Agency and the Secretary of the Department containing the Coast Guard to carry out the provisions of section 311(j)(1)(A) and responsibilities under the National Oil and Hazardous Substances Pollution Contingency Plan. However, the authority for preparation, publication, revision and amendment of this Congingency Plan was given to the Council on Environmental Quality in Executive Order 11735. The Contingency Plan, through the delegation of authority from the President, gives the responsibility for removing discharged oil or hazardous substances from inland waters to EPA. This responsibility includes designation of the On-scene Coordinator (OSC), who is directly in charge of removal or mitigation. The Administrator is required to promulgate regulations under section 311(j)(1)(A) for the removal of oil or hazardous substances discharged into or upon inland waters of the United States. The Removal of Discharged Oil Regulation (33 CFR Part 153, Subpart C) for coastal waters was promulgated by the U.S. Coast Guard on March 25, 1976, 41 FR 12632.

In the event of a discharge, the discharger must provide prompt notification (33 CFR Part 153) that a reportable quantity of oil (40 CFR Part 110) or hazardous substance (40 CFR Part 117) was discharged. Then the discharger should take immediate action to contain the material and prevent further discharge. In order to contain, treat and remove or mitigate the discharged material, mechanical removal methods and sorbents can be used without prior approval by the OSC. However, the OSC can request specific mechanical removal methods and sorbents if he determines that the circumstances require such an approach.

The designated OSC is the key person responsible for insuring that the cleanup is carried out in accordance with the removal guidelines and mandatory provisions of this regulation. For medium and minor discharges or prior to the arrival of the OSC on the scene, the OSC can approve, by telephone, the containment and removal of the material or delegate his authority to local, State, or Federal officials by prior agreement in the regional contingency plan.

Since timeliness in the detection and response to a discharge of oil or a hazardous substance is a major factor in minimizing the environmental impact of a discharge, and because the discharger is usually the first on the scene, the discharger is encouraged to take prompt, reasonable action to mitigate and/or minimize the effects of such a discharge. An owner/operator of a facility is encouraged to study the guidelines, to prepare himself for a potential discharge event and to have appropriate removal equipment available.

In order to encourage the discharger to clean up his own discharge voluntarily and in a prescribed manner, the regulation provides the following incentives for taking positive steps toward mitigation: (a) lower cleanup cost as a result of prompt response; (b) adjusted penalty assessments levied under section 311(j)(2) and section 311(b)(6)(B), as amended; and (c) conditional reimbursement amounts to which the discharger may be entitled to recover under section 311(i). The penalty assessments will consider the care and extent of mitigation efforts manifested by the discharger (see 40 CFR 117.22) and the conditional reimbursement amounts will be dependent upon demonstrated compliance with the removal guidelines and mandatory provisions contained in this regulation.

If the discharger refuses to take any action, or if, in the judgment of the OSC, the discharger fails to comply with these

regulations, then the OSC is authorized to initiate removal actions. When the OSC assumes responsibility for removing the discharged substance, the discharger will be held liable for expenses incurred by the Federal Government in cleaning up the discharge. Additionally, under 311(j)(2) the discharger is subject to a civil penalty of not more than $5,000 per day if the discharger (1) uses chemical agents without prior approval from the OSC or (2) fails to comply with the restrictions for use of chemical agents in accordance with Annex X to the National Oil and Hazardous Substance Pollution Contingency Plan (40 CFR 1510, 40 FR 6298–6301).

In those instances where the OSC has authorized the use of chemical agents, a discharger will be held liable for civil penalty for noncompliance with Annex X if he: (1) uses chemical agents which have not been accepted by the Environmental Protection Agency (as provided in 40 CFR Part 1510, Annex X section 2003.3 2004.3, 2005.3), except as authorized under emergency conditions, (40 CFR 2003.2); (2) applies chemical agents not in compliance with the application rates specified by the OSC; (3) fails to keep records on dispersant types, brands, application rates, methods and effectiveness; (4) applies surface collecting agents in the absence of adequate removal equipment to recover the collected material; or (5) uses biological additives which have not been approved by State and local public health and pollution control officials or fails to seek approval from the OSC for the use of primary nutrients or nutrient additives in conjunction with biological additives. In § 111.7 of this regulation, the procedure for assessing a civil penalty under section 311(j)(2) of the Act is set forth.

Disposal of the discharged material, whether temporary or permanent, needs to guarantee protection against further harm to human health or the environment. If hazardous substances are suspected of being present in discharged oil, the guidelines recommend analyzing the recovered oil. The presence, or absence, of such materials is a key factor in selecting the best treatment or disposal method.

Fire Department Exemptions

Fire departments are exempt from having to obtain OSC approval before using chemical agents if the fire department official in charge determines that without their use there is a substantial hazard to human health, substantial threat of explosion, or a substantial threat of fire hazard to property. The preferred method is to remove oil or hazardous substances by physical means. Fire departments are discouraged from flushing oil or hazardous substances into inland waters of the United States and from using dispersants unless there is a significant danger to public health or welfare if such flushing action or use of dispersants is not taken. Whenever a reportable quantity of oil (40 CFR Part 110) or hazardous substance (40 CFR Part 117) is flushed into inland navigable waters by the fire department official in charge, he is required to give notice (33 CFR Part 153, Subpart B), to the U.S. Coast Guard, immediately, via the 24-hour, toll-free 800-number (800–424–8802). The Coast Guard will then notify the OSC designated in the Regional Contingency Plan whenever chemical agents are used in accordance with the exemption provision.

Note.—EPA invites specific comments on how this reporting requirement might be reduced or whether other reporting alternatives exist.

Relationship With the Hazardous Waste Management Regulations Recently Promulgated Under Subtitle C of the Resource Conservation and Recovery Act

On May 19, 1980, EPA promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (see 45 FR 33066 through 33588). These regulations identify certain materials as hazardous wastes and govern the transportation, storage, treatment and disposal of these hazardous wastes. Some of the oil and hazardous substances that would be governed by this proposed regulation are subject to regulation under those regulations. The Agency is currently investigating ways to amend the hazardous waste regulations to allow a temporary waiver of certain Subtitle C Requirements during Emergency Response Activities. In particular, the Agency is examining the manner and extent to which Federal OSCs responding to emergency situations involving hazardous wastes should be subject to the Subtitle C regulations when acting under emergency response conditions.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA has determined that this regulation is "specialized" rather than "significant" because it is administrative and procedural in nature. It does not alter the degree of compliance, and may increase the environmental (health) benefits of the 311 program.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator.

Part 111 is added to 40 CFR to read as set forth below:

PART 111—REMOVAL OF OIL AND HAZARDOUS SUBSTANCE DISCHARGES

Sec.

111.1 General applicability.
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111.3–1 Discovery, identification and notification.
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Reference: Annex X of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 1510.

Authority: Section 311(j)(1)(A), 501(a), Clean Water Act of 1977 33 U.S.C. 1251 *et seq.* [Public Law 95–217, Public Law 95–576]; E.O. 11735.

§ 111.1 General applicability.

(a) This Part establishes methods and procedures for the removal of oil or hazardous substances from inland waters of the United States, excluding the Great Lakes.

(b) This Part applies to any owner or operator hereafter also referred to as a discharger, of a vessel or onshore or offshore facility from which oil or hazardous substances could be discharged on or into inland waters in quantities defined in the Discharge of Oil Regulation, 40 CFR Part 110 or the Hazardous Substance Regulation 40 CFR Part 117. The owner or operator is responsible for the actions of agents/contractors whom he may hire to remove the discharged material or mitigate the effects of the discharges.

(c) Nothing in this Part shall be deemed to preempt any State laws, regulations or written policies with respect to the removal of oil or hazardous substance discharges, unless such laws, regulations or policies are in conflict with the provision of this Part.

§ 111.2 Definitions.

For the purposes of this Part:

(a) "Oil" means oil of any kind or in any form, inlcuding, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil. "Oil" means oil of non-petroleum as well as petroleum origin.

(b) "Hazardous substance" means any substance designated in accordance with 40 CFR Part 116, as amended.

(c) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, or dumping but excludes (1) discharges in compliance with a permit under section 402 of this Act, (2) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit or modified under section 402 of this Act, and subject to a condition in such permit or modified under section 402 of this Act, and (3) continuous or anticipated intermittent discharges from a point source identified in a permit or permit application under section 402 of this Act which are caused by events occurring within the scope of relevant operating or treatment systems.

(d) "Onshore facility" means any facility (including, but not limited to motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

(e) "Offshore facility" means any facility of any kind located in, on or under, any of the inland waters of the United States other than a vessel or public vessel.

(f) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

(g) "Public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(h) "Owner or operator" means (1) in the case of a vessel, any person owning, operating, or chartering such vessel; and (2) in the case of an onshore facility, or an offshore facility, any person owning or operating such onshore or offshore facility; and (3) in the case of an abandoned onshore or offshore facility, the person who owned or operated such a facility immediately prior to such abandonment.

(i) "Person" includes an individual, firm, corporation, association or a partnership.

(j) "Remove or removal" refers to the removal of oil and/or hazardous substances from the water or shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches.

(k) "On-scene Coordinator" (OSC) means the Federal Official designated by the Environmental Protection Agency in the Regional Contingency Plans to monitor, coordinate and direct the removal efforts of owners and operators of vessels or onshore or offshore facilities subject to this regulation.

(l) "Minor discharge" means a discharge to the inland waters of less than 1,000 gallons of oil; or a discharge of a hazardous substance in a quantity less than that defined as reportable by regulation [40 CFR Part 117].

(m) "Medium discharge" means a discharge of 1,000 to 10,000 gallons of oil to the inland waters; or a discharge of a hazardous substance equal to or greater than a reportable quantity as defined by regulations [40 CFR Part 117].

(n) "Major discharge" means a discharge of more than 10,000 gallons of oil to the inland waters; or a discharge of hazardous substance that poses a substantial threat to the public health or welfare, or results in critical public concern.

(o) "Discharger" means the owner or operator of a vessel, onshore or offshore facility, or that individual designated by the owner or operator who has the responsibility for initiating and directing removal of oil or hazardous substances in the event of a discharge, and who performs those responsibilities of the owner or operator under the Act and the National Oil and Hazardous Substances Pollution Control Plan.

(p) "Chemical agents" are those elements, compounds, or mixtures that disperse, dissolve, emulsify, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, gell, make the mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or removal of the pollutant from the water. "Chemical agents" include dispersing agents, surface collecting agents, biological additives, and burning agents, as defined in Annex X to the National Oil and Hazardous Substances Pollution Contingency Plan. "Chemical agents" does not include "sorbents" as defined in Part 111.2(q)

(q) "Sorbent" means inert and insoluble materials used to remove oil and/or hazardous substances from water through the sorptive action of the material. Examples include: straw, expanded perlite, polyurethane foams, reclaimed paper fibers, peat moss, and activated carbon.

(r) "Inland waters" are defined in each EPA Region by the Regional Contingency Plan. In those cases where such a determination has not been made, inland waters are those waters not affected by the ebb and flow of the tide.

(s) "Fire Department" means a fire-fighting organization established by or on behalf of Federal, State, or local government for the protection of the public from fire or threat thereof.

(t) "Mechanical removal methods" means the use of pumps, skimmers, booms, earthmoving equipment, and other mechanical devices including plugs or patches, to contain and recover discarges on land or from the water environment.

(u) "United States" means the States, the District of Columbia, the Commonwealth of PUrto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(v) "Regional Administrator" means the Regional Administrator of the Environmental Protection Agency, or his designee, in and for the Region in which the discharge occurred.

(w) "Contingency plans" include the National Oil and Hazardous Substances Pollution Contingency Plan and the local and regional contingency plans mandated by the Clean Water Act of 1977. The local and regional plans are to follow and be consistent with the criteria established in the National Plan and are to use the format of the National Plan in their prepartion.

§ 111.3 Removal guidelines.

Section 111.3 establishes the guidelines for discovery, identification and notification, containment and/or collection, removal or mitigation and disposal. These guidelines should be followed in the event of a reportable discharge into inland waters of oil and/or hazardous substances as defined in 40 CFR Parts 110 and 117. In addition to the guidance given in § 111.3, the discharger, when he elects to clean up the discharge, should be responsible for establishing cooperation and coordination with local authorities, safety at the handling site, and education of the participants regarding the hazards of the situation, pertaining to both containment and operation.

§ 111.3-1 Discovery, identification and notification.

(a) In the event of a discharge, the discharger should determine what type of discharge is involved and locate its source. In determining the type, the discharger should record as available:

(1) Time of discharge;

(2) Information from markers, placards, plates or color codes;

(3) Owner or distributor;

(4) Nearest highway number, mile marker and distance to highway;

(5) Location of nearest waterway or waterbody; and

(6) Nearest town, distance and direction to it.

(b) In the event identification of discharged material is not possible from paragraph (a)(2) of this section, physical properties should be used by the discharger to assist in identifying the materials involved. Properties such as physical state, type of odor emitted, color, turbidity, behavior in water, irritability to eyes, fuming, flaming, foaming, gas emitting or reactions occurring can identify class of chemicals and suggest specific chemical designation. Samples should be taken where possible or necessary.

(c) Concomitant with substance identification, the discharger should determine the rate of material spread to the extent practical, any endangered waterbodies or public areas, the status of the discharge or leak, meteorological conditions, and, in the case of more than one material, the compatibility among the chemicals discharged.

(d) Upon identifying a discharge, the discharger will notify the U.S. Coast Guard via the 800-number (800-424-8802) in compliance with 33 CFR Part 153, Subpart B, who will in turn notify the OSC. The OSC will then be responsible for implementing the provisions of this regulation in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan. For medium and minor discharges or prior to arriving on scene, the OSC can approve mitigation actions by telephone or delegate his authority to a local official designated in the Regional Contingency Plan. The OSC will encourage the use of mechanical mitigation methods and sorbents to the maximum extent possible. Upon identifying himself to the discharger, the OSC will notify him of the Agency's desire to have removal performed in accordance with this Part and the National Oil and Hazardous Substances Pollution Contingency Plan. The OSC will inform the discharger of his reimbursement liability for removal of the discharge in accordance with section 311(f) of the Act, if the government performs the removal or cleanup operation.

(e) Upon identifying the material discharged, an assessment of the discharge's magnitude for human danger and the potential for environmental damage should be established by the discharger in conjunction with the OSC. In performing the assessment, the discharge should provide the OSC with the following information:

Identity of material
Time discharge began
Where discharge occurred
How much material was originally present
Wind speed and direction
Cloud cover
Current speed and direction, if applicable
Condition of container
Type and size of container

The OSC will utilize this information to predict the effect of the hazard on downwind or downstream population and environment. Information inferred from the predictions will be relayed by the OSC to appropriate authorities, the Civil Defense Agency or police department, so that necessary safeguards can be taken. Where practical, the information supplied to the OSC will be utilized in one of the existing computer models which are used to predict the effect of the hazards on downwind or downstream populations. Safety is of prime importance and all precautions should be taken. Appropriate local officials should be notified immediately when any risk to humans has been established. The discharger should warn users of the water or others who might be adversely affected by the discharge; seeking of assistance from State and local officials in this effort is encouraged. Operators of water intakes should be notified in a timely manner to preclude the contamination of municipal and industrial water supplies. Likewise, publicly-owned wastewater treatment plants should be notified if the discharge enters the municipal wastewater collection system.

§ 111.3-2 Containment and/or collection.

(a) Once the identity and danger of the discharge has been assessed, various methods of remedial action might be appropriate. To prevent further discharge, the discharger should make a reasonable effort to stop and contain the discharge at its source by the effective use of mechanical collection and/or containment methods and/or sorbents. These actions are recommended unless they would endanger life or property or another more effective and readily available method is more feasible. If containment of a volatile, caustic, etiologic or highly flammable substance causes a safety hazard, other alternatives for isolating and removing the discharged material should be considered. Harmful effects of materials deposited in marsh and swamp areas, are difficult to mitigate by either physical removal or by dispersion. Consequently, the discharger should give high priority to the protection of these areas from contamination by means of containment booms and sorbent materials. Waterfowl and other wildlife must be protected from the effects of discharges. The discharger should immediately implement the use of defensive booms or barriers to protect designated wildlife areas. Waterfowl and wildlife cleaning and rehabilitation activities and installation of devices to discourage birds and animals from entering affected areas can be recommended by the OSC or appropriate local, State and Federal officials. Early action taken to contain the discharge can greatly simplify cleanup and greatly mitigate the discharge's impacts. Due to the importance of early containment, the discharger should utilize the information gathered for section 111.3-1 to determine the extent of needed containment or collection activities. The discharger should also refer to the appropriate discharge response handbook for handling suggestions, if it is available. After considering all the pertinent information, appropriate methods of containment should be evaluated until a feasible method of containment is determined.

(b) If the discharger determines from the evaluation that collection, rather than, or in addition to, containment is more feasible, consideration will first be given to the more readily available collection equipment such as suction skimmers, vacuum skimmers, sorbents, and dredging. For discharges occurring on land the discharger should consider using earthen dikes, foamed polyurethane or concrete, excavation or dikes and sorbents in any practical combinations for containment or collection. If the discharge occurs in water and the material is more dense than water, excavations and dikes would be feasible. For those soluble or miscible substances that are discharged into water, sealed booms, diversion of either the contaminated or uncontaminated flow, or containment of the entire waterbody might be feasible. Booms, weirs, pneumatic barriers and sorbents should be considered for containing or collecting materials that float on water. If the discharged material is escaping to the atmosphere, mist knock down, fans or blowers should be considered. Containment or collection alternatives should not be limited to the above items. If mechanical removal methods or sorbents are inappropriate, discharged materials might be readily mitigated by the application of other specific substances, such as OSC approval chemical agents. Under no circumstances can chemical agents be used without prior approval by the OSC.

(c) The OSC is authorized to approve or deny the use of specific mitigation methods on a case-by-case basis since the OSC has the responsibility for insuring their proper utilization. When

sorbents are used, selection considerations should include hydrographic and meteorological conditions, characteristics of the sorbent, and availability of mechanical removal methods for containment and recovery of the sorbent. The discharger should use sorbents only when adequate removal equipment is available to recover the sorbent material.

§ 111.3–3 Removal or mitigation.

(a) Physical removal of discharged material may be initiated or carried out concurrently with containment. The discharger should select mechanical removal methods and sorbents that are most effective in expeditiously removing the discharged material, mitigating related damages, and minimizing secondary pollution effects from the removal operation. Although selection of mechanical removal methods and sorbents does not require prior approval by the OSC, he can request alternative methods when other considerations such as hazards to human life and health, threat of explosion and fire hazard to property outweigh environmental concerns. After containment or collection, the discharger, OSC and other responsible agencies collectively should select the most feasible method for handling the discharged material giving consideration to logistics and start-up time of the treatment scheme, power requirements, and the system's flexibility. The treatment system chosen should be capable of integration into a parallel batch system which would allow the flexibility and simplified operation of a batch process and yet permit continuous operation. Consideration should be given, but not limited to:

(1) Treatment *"in situ"* with a makeshift or commercial process;

(2) Treatment in an on-site, but off-stream treatment system;

(3) Transfer to another site for disposal or treatment;

(4) Dilution and dispersion into the natural environment.

In determining what removal or mitigation method is the most feasible, consideration should be given to whether the discharge is containable, and whether it is contained and whether the discharge can be treated within a reasonable time limit.

(b) If treatment is to be *"in situ"* or on-site, consideration should be given to methods available for field treatment, availability and accessibility of the site for treatment, availability of supplies, and potential of remote transporting in the event that on-site or *"in situ"* treatment is not feasible.

(c) When transfer of the removed material to another site for disposal or treatment is necessary, the following considerations are needed:

(1) Availability of a remote treatment or disposal site;

(2) Feasibility of handling discharged material in this manner;

(3) Compatibility of the volume of removed material with the capacity of the remote site;

(4) Permission for use of the site from local, State and Federal officials;

(5) Availability of suitable vehicles for transporting removed material;

(6) Transportability of removed material within a reasonable time limit; and

(7) Feasibility of transporting removed material from a political economic and technical standpoint.

(d) Dilution and/or dispersion are candidate processes for mitigation only after all other approaches are determined to be infeasible. Dilution and dispersion should only be utilized where reduction of local hazards from the discharges is of maximum importance. When dilution and dispersion approaches are selected, complete mixing must occur, with waterbody assimilation limited to a certain area and without formation of undesirable side reactions or by-products.

(e) In all environmentally significant discharge episodes, the OSC will make the final determination when cleanup actions taken by the discharger can be terminated or when all material, which can reasonably be cleaned up, has been removed. The discharger should document the sequence of events and actions that he has taken.

§ 111.3–4 Disposal.

(a) For cleanup of major discharges where the discharger assumes responsibility, all disposal procedures, methods and sites need prior approval by the OSC. In all disposal cases, any permits needed must be obtained from Federal, State and local authorities. The techniques and regulations established under the Resource Conservation and Recovery Act (Pub. L. 94–580) except where the OSC has been specifically exempted under the RCRA regulations. For proper disposal of the discharged material the discharger should immediately initiate a sample collection and analysis program, if the material is suspected of being contaminated with hazardous substances.

(b) If the discharged material is an oil, free of hazardous substances, then there are certain techniques which should be followed for the disposal of the recovered oil. Stockpiling of the oily debris may be permitted by the OSC as a temporary means of storage, while determining the suitability of all available disposal options. When this occurs, it should be performed in a manner that precludes the threat of pollution or potential for pollution of nearby surface or ground water. The preferred method for disposing of oil is reclamation or reprocessing. When reclamation is not feasible, combustible sorbent and oil-soaked debris should be incinerated in a well designed operating municipal or industrial facility with the necessary emission control equipment, but only if such incineration is permitted and the facility meets State and local air pollution regulations. Although incineration in permanent, well designed facilities is desired, use of on-site temporary facilities may be approved by the proper authorities including the OSC.

Another low-cost disposal alternative is direct burning in an open pit. When transportation of recovered oil from a remote area poses additional risks of discharge and burning does not affect inhabited areas or other valuable resources, open pit burning might be considered. Because of the severe air pollution consequences and restrictions imposed on open burning, permits must be obtained in all cases from State and local authorities. Oil-soaked debris may be applied on land only after the suitability of the site for land application has been determined. In all cases, the proper local or State officials and the OSC must be contacted for approval and specific guidance. Factors which should be considered for such a determination are: climatological conditions, hydrogeological conditions, site location, soil characteristics, surrounding land use, etc. With heavier oils, non-combustible sorbents or sorbents which emit noxious fumes upon incineration or burning, or when land application is not feasible, disposal in a chemical waste landfill may be employed after obtaining permission of local and State authorities and the OSC.

(c) If the discharged material contains a hazardous substance, the disposal procedures should:

(1) Isolate and concentrate the hazardous constituents in the material by such methods as coagulation, settling, etc.;

(2) Recover potentially useful substances, energy or materials;

(3) Incinerable hazardous organic substances in a well designed facility with proper emission control devices;

(4) Detoxify and neutralize to the greatest extent possible other nonburnable substances through

physical, chemical and biological means, and

(5) Secure land disposal for those hazardous substances not amenable to recovery, treatment or destruction. The disposal site (chemical waste landfill) must provide long-term protection to the quality of surface and ground water from the hazardous substances and prevent hazards to public health and the environment.

§ 111.4 Mandatory provisions.

(a) The use of chemical agents for controlling oil and/or hazardous substance discharges is prohibited unless such use is approved by the OSC.

(b) Chemical agents approved for use by the OSC must be applied on inland waters only in accordance with the provisions contained in Annex X to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 1510). Sinking agents, as defined in Annex X to the National Oil and Hazardous Substances Pollution Contingency Plan, must not be applied to inland waters of the United States.

(c) When responsibility for handling a discharge situation is assigned by the discharger to another person or company, the discharge shall be responsible for actions taken by the assignee.

§ 111.5 Violations.

Owners or operators of vessels, onshore or offshore facilities or any other person or discharger subject to Part 111 shall be liable for a civil penalty for:

(a) Using chemical agents, without approval from the OSC, as required in § 111.3(a) of this Part.

(b) Failure to comply with the restrictions for use of chemical agents in accordance with Annex X to the National Oil and Hazardous Substances Pollution Contingency Plan as required in § 111.3(b) of this Part and §§ 2003.2–1, 2003.2–3, 2004.2–1, 2004.2–2, 2005.1–1, 1005.2–1 and 2005.2–2 of the National Contingency Plan.

§ 111.6 Civil Penalty.

(a) Any person who violates the provisions of subsections 111.5 of this Part shall be liable for a civil penalty of not more than $5,000 per day. Each day will be a separate offense.

(b) In determining the amount of such penalty to be assessed, the following factors shall be considered:

(1) Gravity of the violation; and

(2) Demonstrated good faith efforts in rapidly complying with §§ 111.3 and 111.4 after notification of a violation.

c. The amount of the civil penalty to be assessed may be settled by compromise at any stage of the proceedings.

(d) Civil penalties may be assessed by the Regional Administrator or his designee. The person who has been assessed any penalty under his subsection may appeal that assessment to the Administrator of the Environmental Protection Agency.

§ 111.7 Procdure for penalty assessment.

No penalty shall be assessed unless the owner or operator charged shall have been given notice and an opportunity for a hearing. The procedures for assessment of a penalty shall be those published in 40 CFR 114, Civil Penalties for Violation of Oil Pollution Prevention Regulations.

§ 111.8 Cost recovery/fine reduction.

In any action to recover costs under section 311(i) or obtain reduced fines under 311(b(6)(B) and (j)(2) of the Clean Water Act with respect to a discharge of oil and/or a hazardous substance into inland waters, the owner or operator must demonstrate (a) compliance with mandatory provisions of this Part and (b) a sincere effort to follow the procedures set forth in 111.3 of this regulation.

§ 111.9 Fire department exemptions.

(a). Fire departments are exempt from the mandatory provisions when the fire official in charge determines that there is a significant threat of explosion or fire, or hazard to human life of limb, which could be substantially reduced by the application of chemical agents affecting inland waters.

(b). Whenever chemical agents are utilized in accordance with paragraph 111.9(a), the fire official in charge needs to notify the U.S. Coast Guard as soon as possible. Where possible such notification should be made prior to the application of such agents via the toll-free 800-number (800-424-8802).] The Coast Guard will, in turn, notify the OSC designated in the Regional Contingency Plan.

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